

In response to the request of the Revenue and Taxation Interim Committee, the Tax Commission suggests the committee consider the following issues in the long-term planning the committee conducts pursuant to HJR 10.

### 1. Military Spouse Income Tax

- S. 475, Military Spouses Residency Relief Act (Act), was passed in late 2009. Among other things, the Act provides that “[i]ncome for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.”
- Since 2010, our income tax return and publications state that this deduction applies to all income, and not just income from services performed, of the nonresident military spouse. In effect, the Tax Commission has been more generous than the federal law.
- Does the Legislature want to codify this long-standing practice?
- Additionally, the current return provides for a subtraction from FAGI for the income of a qualified servicemember spouse. While this treatment is correct for the servicemember military income, it is incorrect for the nonresident spouse income, as it leads to an artificially high taxpayer tax credit and a resulting low tax. The tax impact is further exacerbated by the nonresident spouse then apportioning the income on the TC-40B. The end result is that we are allowing an increased taxpayer tax credit on income that is ultimately apportioned to another state.

### 2. Multistate Tax Compact/Utah Corp. Apportionment Statutes

- 2013 SB 247 (Harper), effective July 1, 2013, repealed the Multistate Tax Compact (compact) and re-enacted it without Articles III, IV, and IX. In addition, the bill repealed Utah’s membership in the Multistate Tax Commission (MTC) on June 30, 2014 and allowed the state to participate only in the MTC audit and nexus programs effective July 1, 2014.
- 2014 SB 214 (Bramble) reinstated Utah’s membership in MTC that was set to expire on June 30.
- The version of the compact that Utah has enacted is codified as Section 59-1-801.5. The compact is further codified in Title 59, Chapter 7, Part 3.
- The MTC has amended Article IV of the compact. These amendments include basing apportionment of corporate income on apportionable and non-apportionable income instead of business and non-business income; providing that a taxpayer shall source the receipts for sales involving property other than real or tangible personal property to a state to the extent the taxpayer’s market for those sales is in the state instead of the state where the greatest benefit of the sale is received; and changing the burden of proof when a taxpayer seeks an exception to the allocation and apportionment provisions of Article IV.
- If the Legislature elects to enact all or part of Article 4, it will require changes to Section 59-1-801.5 and Title 59, Chapter 7, Part 3.

### 3. Sales Tax Exemption for Products Purchased For Resale

- Section 59-12-104(25) provides a sales and use tax exemption for: "a product purchased for resale in this state...".
- The plain language of the exemptions seems to require that the resale should have to occur in the state, but that is not the longstanding practice and really doesn't even make sense.
- We believe the exemption should read "a product purchased in this state, for resale, ...".

### 4. Individual Income Tax Deduction for Build America Bonds

- Section 11-14-303 provides that bonds issued by a political subdivision are "exempt from all taxation in this state, except for the corporate franchise tax."
- As part of the American Recovery and Reinvestment Act, the federal government created the Build America Bond (BAB) program to help states and local governments access capital markets. These bonds are subject to income tax at the federal level.
- Because the BABs are subject to federal tax, and accordingly included in FTI, they will not receive the individual income tax exemption required by Section 11-14-303 unless they are deducted from FTI on the state individual income tax return.
- There is no deduction listed in the current tax statutes for BABs or other bonds issued by a political subdivision that are subject to income tax at the federal level.
- We recommend that a Subsection 59-10-114(2) be amended to cross reference the exemption under Section 11-14-303.

### 5. Sales Taxability of Streamed Media

- Many of Utah's sales and use tax provisions were enacted prior to the availability of new technologies, including streamed media.
- The Tax Commission currently reads some of these sales and use tax provisions to include these new technologies.
- The Revenue and Taxation Interim Committee may wish to review Utah's sales and use taxation of streamed media and consider whether the sales and use tax statutes should be modified or clarified.